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Letter dated 13 May 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 27 February 2004 (S/2004/149). The Counter-Terrorism Committee has received the attached fourth report from Cuba submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Letter dated 13 May 2004 from the Permanent Representative of Cuba to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to transmit to you herewith the text of the report containing the replies of the Government of the Republic of Cuba in relation to the matters raised in your letter of 13 February 2004.

In submitting to you this fourth report, pursuant to paragraph 6 of Security Council resolution 1373 (2001), we reiterate the intention of the Government of Cuba to continue to cooperate with the Counter-Terrorism Committee (see enclosure).

(*Signed*) Orlando **Requeijo Gual**
Ambassador
Permanent Representative

Enclosure

[Original: Spanish]

Fourth report of the Republic of Cuba to the Counter-Terrorism Committee of the Security Council, submitted pursuant to paragraph 6 of resolution 1373 (2001)

1. Implementation measures

Effectiveness in the protection of financial system

I. Introduction

Cuba's banking and financial system and the central administrative organs of the State have continued to comply with the relevant laws, rules and regulations in order to prevent, detect and respond to any event which might be related to criminal activities such as corruption, money-laundering or the financing of terrorism.

One of the main tasks of the Central Bank of Cuba is to monitor the application of current regulations and of any new measures adopted in order to prevent and suppress illicit or criminal activities and suspicious transactions involving money-laundering and other unlawful activities, both in its relations with various bodies within Cuba and their operations and also at the international level.

In order to further strengthen measures for the prevention and suppression of any kind of criminal activity or possible money-laundering operations, the Central Bank has adopted as a major goal for 2004, inter alia, the establishment of an organizational unit for the recording and analysis of illegal acts, cases of corruption and other unlawful activities which might occur within the Cuban banking system. It is also planned that Compliance Officers should begin work, under the authority of the Central Bank, at the regional level (the eastern, central and western regions).

To the extent that it may be useful or desirable for both sides, the Central Bank of Cuba is willing to exchange information with counterpart authorities in any country, on either an intermittent or a regular basis, provided that this takes place on the basis of mutual respect and in a spirit of cooperation.

1.1 Regarding the effective implementation of subparagraph 1 (a) of the resolution, the CTC would appreciate knowing whether the Republic of Cuba provides its administrative, investigative, prosecutorial and judicial authorities with specific training aimed at enforcing its laws in relation to:

- **Typologies and trends aimed at countering terrorist financing methods and techniques;**
- **Techniques for tracing property which represents the proceeds of crime or which is to be used to finance terrorism, with a view to ensuring that such property is frozen, seized or confiscated.**

Please also outline the relevant programmes and/or courses in these areas. The CTC would further appreciate receiving information regarding any mechanisms/programmes that the Republic of Cuba has put in place to train its various economic sectors in the detection of unusual and suspicious financial

transactions related to terrorist activities and in the prevention of the movement of illicit money.

By Decision No. 91/1997 of its Minister-President, the Central Bank of Cuba introduced a guide to assist members of the national banking system in the prevention and detection of illicit capital movements. Section VIII of the guide provides for personnel to be trained in the implementation of the rules set out therein.

Subsequently, the Superintendent of the Central Bank issued Instruction No. 8/2001, which requires financial institutions to conduct two-day study sessions at least twice a year, to familiarize staff with the current rules applying to financial institutions and their hierarchy down to the branch-office level.

To that end, workshops have been conducted at the provincial and national levels, with presentations on the prevention and suppression of money-laundering activities.

The National Banking Training Centre of the Central Bank of Cuba has conducted a number of courses, including diploma and postgraduate courses, with senior trainers of various nationalities teaching modules on money-laundering. As part of the various diploma courses, Cuban banking specialists prepared theses on subjects related to the prevention and suppression of money-laundering.

For 2004, there are plans to organize a national risk-assessment event, and a number of study and discussion workshops are to be held at both the provincial and the national levels. At these meetings, various papers will be presented and analysed on the prevention and suppression of money-laundering operations and other criminal activities, whether or not they are related to possible terrorist financing activities.

The recommendations of the Financial Action Task Force on Money Laundering (FATF) on the financing of terrorism have been circulated and studied. They have always been taken into account in the drafting by the Central Bank of Cuba of rules for the prevention and detection of possible money-laundering operations, regardless of the destination of the assets concerned, to ensure that they are borne in mind in planning the training of banking-sector personnel.

The following documents of the Basel Committee on Banking Supervision (BCBS) have been circulated and studied: "Customer due diligence for banks", of October 2001, and "General Guide to Account Opening and Customer Identification", of 10 February 2003.

In case any attempt were made to use the country's banking system for illicit financial transactions, and with due regard for Central Bank regulations, banks based in Cuba have included in their manuals of instructions and procedures the necessary techniques for preventing and detecting any kind of illicit operation originating outside Cuba.

The central administrative organs of the State, in accordance with their functions, characteristics and financial activities, design training programmes on the prevention of illegal operations originating in other countries. These programmes are to a considerable extent based on the Central Bank's annual guidelines on financial policy for transactions involving foreign countries, which include a

number of considerations on fraudulent activities in external financing operations, and recommendations for their prevention.

1.2 In regard to subparagraph 1 (a) of the resolution, the CTC would appreciate receiving the number of suspicious transaction reports (STRs) received by the Bank Oversight Office of the Central Bank of Cuba and other competent authorities, with particular regard to STRs from:

- **The insurance sector;**
- **Money remittance/transfer services;**
- **Foreign exchange bureaux.**

Please also indicate the number of STRs analysed and disseminated, as well as the number of those that have led to investigations, prosecutions or convictions. Do authorities in the Republic of Cuba audit financial institutions to verify compliance with requirements to submit suspicious transactions reports? Are foreign exchange bureaux and remittance agencies routinely audited? How often are financial institutions subject to such audits?

In 2003, Cuban financial institutions detected no suspicious transactions relating to the financing of terrorism.

Transfers to and from Cuba via our correspondent banks are effected through the SWIFT system. To date, no suspicious transactions have been detected in our systematic monitoring of such transfers, with due regard for banking secrecy.

The Bank Oversight Office of the Central Bank of Cuba carries out regular inspections of financial institutions based in the country. These inspections take place annually in the case of commercial banks, and at least every 18 months for non-banking financial institutions and the representative offices of foreign banks. No financial connection between these Cuban financial entities and terrorist individuals or groups has ever been detected.

Cuban banks have an internal auditing organ which carries out a yearly programme to monitor compliance with their manuals of instructions and procedures, and with the regulations of the Central Bank and of the other central administrative organs of the State, in relation to financial oversight and commerce with foreign countries.

Cuban financial institutions are also audited annually by external auditing firms duly authorized by the Ministry of Auditing and Control and the Bank Oversight Office of the Central Bank of Cuba.

Some banks are also audited by the international firm Ernst and Young.

1.3 Within the context of the effective implementation of subparagraph 1 (a) of the resolution, the CTC would be grateful for an explanation of the rules for identifying persons or entities which maintain bank accounts, on whose behalf a bank account is maintained (i.e., the beneficial owners), or who are the beneficiaries of transactions conducted by professional intermediaries, as well as any other person or entity connected with a financial transaction. Please outline any procedures that enable foreign law enforcement agencies or other counter-terrorist entities to obtain such information in cases where terrorist links are suspected.

In November 2002, the Superintendent of the Central Bank issued a new guide tailored to the characteristics of Cuban financial institutions, in order to step up their work on the "know your customer" principle.

The financial transactions of all individuals and entities, both Cuban and foreign, residents and non-residents, having a financial interest in Cuba, are conducted through the opening of accounts with Cuban banks, the only ones authorized by the Central Bank to accept funds and open accounts.

To open an account of any kind, the customer must sign a contract in which his rights and obligations are set out. In addition, the banks comply with the "know your customer" model.

Should a customer's financial transactions fall outside the parameters of his declared financial activities or his usual behaviour, he is required to fill in a declaration on the origin and destination of the funds.

The opening of accounts with Cuban banks is governed by Central Bank regulations, which establish the minimum requirements that must be met by would-be customers before they are accepted. The opening of an account is not automatic; time is required for the necessary information to be obtained, particularly when the potential customer is foreign or is a Cuban based abroad.

Cuba remains willing to cooperate with any country in combating the financing of international terrorism, in accordance with its national legislation, international law and the Charter of the United Nations. Any cooperation or exchange of information between the Central Bank of Cuba and international bodies or interested States will take place through the signing of agreements or by other means, based on the premises of mutual respect and the usefulness or appropriateness of such cooperation for both parties.

1.4 In relation to money-laundering and the financing of terrorism, the CTC would be grateful to receive an outline of any special strategy that the Republic of Cuba may have developed with a view to enabling its investigatory agencies effectively to prevent resources from being transferred to terrorists (e.g., under-invoicing of exports and the over-invoicing of imports, manipulation of high-value goods like gold, diamonds, etc.). What appropriate mechanisms has Cuba created (e.g., a "task force") to ensure adequate cooperation and information-sharing among the various government agencies that may be involved in investigations of terrorist financing (e.g., police, customs, the Bank Oversight Office of the Central Bank of Cuba and/or other competent authorities)?

The Central Risk Information Office of the Central Bank of Cuba is the body responsible for receiving information on suspicious transactions from financial institutions. The Office carries out cooperation and exchanges of information as needed with the competent entities of the Ministry of the Interior, the Attorney-General, customs and other central government agencies in relation to any criminal activity or possible money-laundering operation, which may or may not be related to a possible terrorist financing activity, in order to ensure that the Cuban financial system cannot be used for activities of this type.

There are no private entities in Cuba which engage in trade involving the sale of gold, diamonds or other high-value goods, nor are any authorized to do so.

The blockade imposed since the early 1960s by the Government of the United States of America on Cuban financial and commercial operations does not allow our banks to correspond with American banks in United States territory and vice versa. This is not the case, however, with financial institutions in other countries, with which Cuban banks do have correspondent relations.

Moreover, the Central Risk Information Office of the Central Bank of Cuba, which supplements the work of the banks, keeps the financial institutions up-to-date regarding the lists of alleged terrorist individuals and entities drawn up by United Nations bodies in order to avoid any transactions which might be aimed at providing them with financing. The banks and non-bank financial institutions have instructions from the Superintendent to consult the United Nations web site directly in order to remain up-to-date on changes to these lists.

In addition, a committee established in late 2003 by the Technical Council on Fraud Prevention is working on a revision of the regulations of the Central Bank of Cuba with a view to the prevention and detection of possible money-laundering operations which may or may not be related to a possible terrorist financing activity.

Banks and non-bank financial institutions also comply with international "know your customer" practices by carrying out the following due diligence obligations:

(a) Making a reliable identification of probable clients and filling out the "know your customer" form;

(b) Monitoring the client's financial transactions in order to detect unusual transactions;

(c) Keeping and preserving information on clients and their identity while financial transactions are being carried out and for five years following the last transaction;

(d) Reporting any suspicious transactions to the competent authorities.

In this connection, see also the reply to question 1.9 concerning anti-terrorist strategies.

1.5 The CTC notes from the supplementary report (at p. 3) that lawyers and notaries in Cuba are not authorized to engage in any form of financial transaction. Please outline whether this prohibition also addresses the situation when lawyers, notaries, other independent legal professionals and accountants prepare transactions for their clients, involving the following activities:

- **Buying and selling real estate;**
- **Managing a client's money, securities or other assets;**
- **Management of bank, savings or securities accounts;**
- **Organizing contributions for the creation, operation or management of companies;**
- **Creation, operation or management of legal persons or arrangements, and buying and selling of business entities.**

Please outline any existing provisions that may apply to the above situations. In the absence of any such provisions, please indicate the measures that the

Republic of Cuba intends to take in order fully to meet the requirements of this aspect of the resolution. Please also provide the CTC with an outline of the legal provisions in place that require other financial intermediaries (real estate agents, dealers in precious metals and stones, trust and company service providers) to identify their clients and to report suspicious transactions to the relevant authorities.

In Cuba any financial transaction related to receiving deposits and opening bank accounts of any type may be carried out only through Cuban banks. Non-bank financial institutions and branches of financial institutions established in Cuba are not authorized to accept deposits or open accounts for clients; they may only carry out financing operations authorized under the licence granted to them by the Central Bank of Cuba.

There are no lawyers, notaries or accountants in private practice in Cuba. The legal profession is regulated by Decree-Law No. 81 of 8 June 1984 promulgated by the Council of State. In its article 5, the Decree-Law defines the National Organization of Law Collectives, which is an independent national entity of a socially useful and professional character, with legal personality and its own funding. Its membership is composed of lawyers and is voluntary. It is regulated by the aforesaid Decree-Law, the supplementing legislation thereto, and the resolutions and decisions of its governing bodies.

Lawyers are free to practice in Cuba. In the performance of his duties a lawyer:

(a) Is independent and owes obedience only to the law;

(b) Enjoys full legal rights and guarantees in expounding arguments based in law;

(c) Contributes to the attainment of justice through the observance and strengthening of socialist legality;

(d) Participates in the social education of his clients and of all citizens and in respect for the rights established by law.

Furthermore, a notary is recognized in Cuba as a public official authorized to witness extrajudicial legal transactions in which he is called upon to participate as provided by law. A notary practises his profession within the geographical area determined by his appointment. In the performance of his duties he owes obedience to the law and his conduct must comply with socialist legality. Only an official appointed in accordance with Act No. 50 (Government Notaries Act), adopted by the Cuban National Assembly of People's Power on 28 December 1984, may practise as a notary; the Act regulates notarial functions and practice in Cuba and is the basis for the establishment of the entire network of notaries in the country.

A notary may not hold another post or job, whether elective or appointed, which carries with it governmental, administrative or executive functions, with the exception of a post in the Ministry of Justice, a teaching or scientific post, or a post as delegate or deputy to the organs of People's Power; in the latter two cases, if a notary occupies an executive post in those bodies, he may not practise as a notary.

With the adoption of Act No. 77 of 20 January 1984, non-governmental law offices were established to provide various services to foreign individuals and

entities, Cuban citizens residing in foreign countries, and mixed enterprises and other economic associations authorized by Decree-Law No. 50 of 15 February 1982 and later by the Cuban Investment Act. Because of the high degree of professional specialization which they required, such services were to be provided exclusively by the entities established under Decree-Law No. 50.

Following the promulgation of the Decree-Law, various legal services firms were established to provide services on an exclusive basis, including notarial services, to foreign individuals and entities, Cuban citizens residing abroad, and mixed enterprises and other types of economic associations.

On the basis of the foregoing, interested nationals of other countries can contract the services of a lawyer or notary who can, through a power of attorney or an express designation, carry out transactions on behalf of his client with Cuban financial institutions in any trade deals carried out in the country.

Resolution Nos. 27 and 28 of the Central Bank of Cuba, dated 6 June 2002 and published in the Official Gazette (copies of which are annexed hereto), regulate all matters involving the import and export of precious metals and stones.

1.6 The CTC notes from the third report (at p. 4) that if a request is issued by another country for the freezing of funds of non-resident persons and entities supporting terrorism abroad, the Central Bank of Cuba is free to cooperate with such request. In this regard, please indicate whether the Republic of Cuba has enacted specific authority to freeze the assets of terrorists and terrorist organizations that are on lists other than that issued pursuant to Security Council resolutions 1267 (1999) and 1333 (2000). The CTC would appreciate receiving copies of the laws and regulations that are relevant to this area. Please also outline the procedure used to proscribe foreign terrorist organizations (other than those listed by the Security Council), if any. The CTC would appreciate receiving data regarding the number of such organizations involved and/or corresponding examples. How long does it take to proscribe a terrorist organization on information supplied by another State? In regard to compliance with subparagraph 1 (c) of the resolution, could the Republic of Cuba provide the CTC with statistics showing how much property was frozen, seized, and/or confiscated in relation to the financing of terrorism? Could the Republic of Cuba provide this information in regard to individuals or entities designated in lists produced by any and all of:

- **Security Council;**
- **Any States or other international organizations?**

Law No. 93 (Law against Acts of Terrorism[1]) provides in its article 8 that the pre-trial judge, the government attorney or the court, depending on the stage at which the proceedings relating to offences covered by the Law are, may issue forthwith an order for the preventive attachment or freezing of the funds and other financial assets, or of economic assets or resources of the defendants, irrespective of the degree to which they have participated in the punishable act, and of any persons or entities that have acted on behalf of the defendants and entities under the defendant's orders, including funds obtained or arising from assets belonging to or

[1] See Law No. 93 (Law against Acts of Terrorism) in Cuba's first report to the Committee (S/2002/15), pp. 36-43.

under the control, direct or indirect, of the defendants and of persons and entities associated with them.

Likewise, article 9 of the Law provides that in respect of the offences envisaged therein the court may, as an accessory penalty, order the confiscation of the defendant's assets, as provided for in article 44 of the Penal Code.

Furthermore, Instruction No. 19 of the Superintendent of the Central Bank of Cuba provides, in its Recommendation No. 6, for "preventive action by blocking or freezing the funds and other financial assets of Cuban or foreign individuals or legal persons under suspicion".

Up to now Cuban banks have not frozen, seized or confiscated property in relation to the financing of terrorism.

Cuba remains willing to cooperate with any country in combating the financing of international terrorism in accordance with its domestic law, international law and the Charter of the United Nations.

In its second report to the Committee (S/2002/1093), Cuba reported the entry into force of Instruction No. 19 of the Superintendent of the Bank of Cuba,[2] containing "Recommendations for combating the financing of terrorism". In drafting these recommendations, Cuba took into account the eight recommendations of the Financial Action Task Force (FATF). A copy of the resolution is annexed to this report.

1.7 In regard to the implementation of subparagraphs 1 (a) and (c) of the resolution, as well as article 8 of the International Convention for the Suppression of the Financing of Terrorism, the CTC would be grateful if the Republic of Cuba would outline its principal legal procedures concerning the confiscation of assets or the operation of other dispossession mechanisms. Please describe how these procedures operate in practice and please indicate which authorities are responsible for their implementation. Please also advise whether, under Cuban law, it is possible to confiscate the proceeds of a crime without first obtaining the conviction of its perpetrator (i.e., in rem confiscation). If not, does the Republic of Cuba envisage introducing such a system? The CTC would welcome receiving a description of the considerations which would normally form part of a review of the decisions taken by the authorities referred to earlier in this paragraph. Please describe how the Republic of Cuba deals, in its laws and procedures, with requests from foreign States for international legal assistance in relation to confiscation measures arising out of terrorist offences.

In Cuba the seizure or confiscation of assets deriving from criminal activities linked to terrorist acts takes place pursuant to a final decision handed down at a criminal trial by a competent court. In its decision the court orders the disposal of the property and assets that are subject to seizure or confiscation. Up to now the Republic of Cuba has not decided to introduce a system of the kind referred to above (confiscation in rem).

[2] Instruction No. 19 of the Superintendent of the Bank of Cuba is annexed to this report.

In accordance with the Law against Acts of Terrorism, the court may, pursuant to a final decision, order as an accessory penalty the confiscation of the defendant's assets, as provided for in article 44 of the Penal Code.

Requests from other States for international legal assistance in relation to confiscation measures arising out of terrorist offences are governed by the provisions in force of the bilateral agreements on judicial assistance signed by Cuba and by the provisions of the Law on Penal Procedures.

In this connection, see also the reply to questions 1.13 and 1.6 concerning measures to establish the liability of natural and legal persons for criminal offences, in particular offences related to terrorist activities.

1.8 The Committee would appreciate receiving a progress report on:

- **The amendment of Decree-Law No. 202 (p. 11 of the first report);**
- **The enactment of a new decree-law on arms and ammunition which deals in greater depth with international trade matters (p. 8 of the supplementary report);**
- **The accession to the Treaty on the Non-Proliferation of Nuclear Weapons and the ratification of the Treaty for the Prohibition of Nuclear Weapons in Latin America (p. 16 of the supplementary report).**

Since the submission of Cuba's first report to the Committee, two legislative instruments have been enacted to supplement Decree-Law No. 202 of 24 December 1999 on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. These are:

- Resolution No. 15 of the Ministry of Science, Technology and the Environment, of 17 February 2003, which approves and brings into force the "Regulation for national inspections and arrangements for international inspections".
- Resolution No. 32 of the Ministry of Science, Technology and the Environment, of 31 July 2003, which approves and brings into force the "Regulation for applying the national monitoring system for chemical substances covered by the Chemical Weapons Convention, the grant of licences and permits and the handling of information".

Likewise, the new Decree-Law on arms and ammunition, which will deal in greater depth with international trade matters, is now in the final stages of preparation before being submitted for approval to the relevant authorities.

Additionally, although the United States of America, the only nuclear power in the Americas, is maintaining a policy of hostility towards Cuba which does not exclude the use of force, on 23 October 2002 the Republic of Cuba deposited its instrument of ratification of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, more commonly known as the Treaty of Tlatelolco, which it had signed in 1995. With the ratification by Cuba, Latin America and the Caribbean have become the first densely populated area of the planet to be completely free of nuclear weapons.

Furthermore, on 4 November 2002 Cuba deposited its instrument of accession to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), although it

regards this instrument as flawed from the outset as well as essentially selective and discriminatory.

Cuba's positions of principle did not change when it became a State party to the NPT. Our country has decided to work from within the Treaty to provide impetus for achieving the priority goal in disarmament recognized by the United Nations: the complete elimination of nuclear weapons. Many people consider the Non-Proliferation Treaty to be an end in itself. For Cuba, it is only a step on the road to nuclear disarmament.

In our opinion, military doctrines which rely on the possession of nuclear weapons are unsustainable and unacceptable. No country or group of countries should be allowed to have a monopoly in these weapons or to develop them in either number or kind. Only when the objective of complete elimination of all nuclear weapons is achieved will the conditions be right for ensuring equal safety for all.

Cuba's accession to the NPT and its ratification of the Treaty of Tlatelolco are testimony to its peaceful intentions and to the political will and commitment of the Cuban State to promoting and strengthening the United Nations, to multilateralism and the international treaties on disarmament and arms control, and to an effective disarmament process which will guarantee world peace.

Although Cuba became a party to the NPT and to the Treaty of Tlatelolco in 2002, the Government of Cuba has never planned to develop or possess nuclear weapons. Our defence planning has never relied on the possession of nuclear weapons or of other weapons of mass destruction. The principles ushered in with the victory of the Socialist Revolution in 1959 are diametrically opposed to whatever contributes to the existence of these weapons.

Cuba's only interest in nuclear energy relates to its peaceful use subject to verification by the International Atomic Energy Agency (IAEA). Cuba will therefore continue to defend vigorously the inalienable right of all States to engage in the research, production and use of nuclear energy for peaceful purposes, and to receive transfers of materials, equipment and scientific and technological information for those purposes, without discrimination of any kind.

Lastly, Cuba wishes to make clear that a United States naval base is located, against the will of the Cuban people and Government, in the province of Guantanamo, a portion of Cuban territory over which the Cuban State does not exercise the jurisdiction pertaining to it because of its unlawful occupation by the United States of America. In consequence, the Government of Cuba does not take any responsibility for this territory for the purposes of the Treaty, since it does not know whether the United States has installed, possesses, maintains or intends to install nuclear material or nuclear weapons on this portion of Cuban territory which is unlawfully occupied.

Effectiveness of counter-terrorism

1.9 Effective implementation of legislation related to covering all aspects of Security Council resolution 1373 requires States to have in place effective and coordinated executive machinery, as well as to create and utilize adequate national and international anti-terrorist strategies. In this context the CTC would appreciate knowing whether Cuban counter-terrorism strategy and/or

policy targeting (at national and/or subnational level) deals with the following forms or aspects of counter terrorist activity:

- **Criminal investigation and prosecution;**
- **Counter-terrorist intelligence (human and technical);**
- **Special forces operations;**
- **Physical protection of potential terrorist targets;**
- **Strategic analysis and forecasting of emerging threats;**
- **Analyses of efficiency of anti-terrorist legislation and relevant amendments;**
- **Border and immigration control, control preventing the trafficking in drugs, arms, biological and chemical weapons, their precursors and the illicit use of radioactive materials;**
- **Coordination of State agencies in all those areas.**

If possible, the Republic of Cuba is requested to outline the legal provisions and other administrative procedures as well as the best practices that are applicable in these areas.

Cuba, which has been the victim of numerous terrorist acts since 1959, most of which have been devised, organized and financed with complete impunity from the territory of the United States of America, and on many occasions by the Government of that country or with its express support, has considerable experience in dealing with this scourge.

This experience has enabled it, until now, to prevent or foil over 630 organized attacks on the life of the President of the Republic, and hundreds of other terrorist acts, many of which were mentioned in the first report submitted by Cuba to the Committee (S/2002/15)[3] and in the Declaration on the implementation by Cuba of the Declaration on Measures to Eliminate International Terrorism,[4] among other documents.

The counter-terrorism strategies and policies adopted by Cuba are consistent with the provisions of paragraphs 1, 2, 3 and 4 of Security Council resolution 1373 (2001), other resolutions of the Security Council on combating terrorism, the resolutions of the General Assembly of the United Nations, including the "Declaration on Measures to Eliminate International Terrorism" contained in the annex to its resolution 49/60 of 9 December 1994, the international instruments on this subject to which Cuba is a party, and national legislation.

In this connection, it should be noted that Cuba's national legislation on this and other subjects is kept under constant review so that its effectiveness can be enhanced. Strategic analysis and threat prevention make it possible to weigh up and assess the physical protection of possible terrorist targets, and to improve intelligence data and the operations of other forces on a continuing basis, in order to

[3] See Cuba's first report to the Committee (S/2002/15), pp. 78-132.

[4] See the letter dated 16 June 2003 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General (A/57/841).

attain the objective of preventing, combating and eradicating terrorism against Cuba in all its forms and manifestations, from wherever it may come.

This effort includes gathering, processing and analysing intelligence data (human and technical) about terrorism; using special forces when necessary; the physical protection of potential terrorist targets; and the strategic analysis and forecasting of emerging threats.

The Border Guard troops have devised a protection system which ensures daily coverage for key strategic targets on the coast (power plants, major fuel deposits, naval vessels and tourist sites) and for the capital. This system includes radar and visual reconnaissance and naval patrols opposite these targets.

In addition, tankers passing through our territorial waters are monitored by means of visual and radar reconnaissance, and naval protection is provided for tankers and other working vessels when in port. Sea and land-based protective measures are also carried out in coastal and maritime areas where oil prospection and extraction is in progress.

Access to harbour installations is restricted, the Port Authorities being responsible for issuing entry permits. Most vessels are searched on entering and leaving port by the Port Authorities and Customs Service, in order to detect the presence of weapons, explosives, drugs and other materials or substances capable of being used in terrorist activities.

Plans are also being drawn up to deal with attempted attacks or robberies on ships in port, naval vessels and docks and sites for recreational fishing. For this purpose, the Port Authorities carry out regular checks on the security and protection systems of vessels at anchor in port, and verify compliance with the measures laid down in the anti-hijacking plans devised by the shipowners. They also carry out measures to monitor access to harbour installations and ships in port.

With regard to immigration control, Act No. 1312/76 on migration and its accompanying Regulation (Decree No. 26/78) stipulate that in order to travel to Cuba, a foreign citizen must hold a valid passport issued by a competent authority, and an entry visa. Cuban consulates abroad grant visas on the basis of the reasons stated by the applicant and their own evaluation of these, in consultation with the national authorities. During their stay in Cuba, foreigners may only pursue activities consistent with the conditions attached to their entry visa. Foreigners who fail to comply with the requirements laid down by immigration law for admission to the country are sent back to the country they came from.

Criminal investigation and indictment also form part of the counter-terrorism strategy. The steps to be taken against the perpetrators of terrorist acts are laid down in current legislation on the subject, including the Penal Code, the Law against Acts of Terrorism and the Law on Penal Procedures, which specify, inter alia, the safeguards applying to the accused and their rights during criminal proceedings.

Moreover, as part of the experience gained by Cuba in dealing with terrorism, close cooperation has been encouraged among national authorities engaged in the various aspects of counter-terrorism. This extends to a system of border and immigration controls to prevent trafficking in drugs, arms, biological and chemical weapons and their precursors, and the illicit use of radioactive materials.

It goes without saying that Cuba's strategies in countering terrorism are not geared only to preventing and combating terrorist acts committed against the Cuban people, but also to ensuring that the national territory is not used for committing terrorist acts against any other country.

The laws enacted by the Republic of Cuba in the years 1959-2001 to prevent and combat terrorism can be consulted in the first report to the Committee (S/2002/15), pages 6-14.

That report, on pages 31-77, covers the laws and other measures adopted by Cuba in the struggle against international terrorism after the adoption of Security Council resolution 1373 (2001).

1.10 Regarding the reference in the supplementary report to articles 110, 111 and 112 of the Penal Code (at p. 11), please outline how those legal provisions address recruitment to terrorist bodies through deception, such as representation that the purpose of recruitment is different from the true purpose (e.g. teaching).

Article 110 of the Penal Code refers to enlistment and other acts hostile to a foreign State which may create a risk of war or measures of reprisal against Cuba, or which expose Cubans to humiliation or reprisals against their persons or property, or which impair Cuba's friendly relations with another State.

In addition, as explained in Cuba's supplementary report (S/2002/1093), article 5 of the Law against Acts of Terrorism specifies that the following are punishable:

- Trying to involve others in acts of terrorism;
- Plotting with one or more persons to commit the offences prohibited by the provisions of the Law;
- Inciting or inducing someone to commit such offences.

As regards acts of recruitment, trying to involve others in acts of terrorism, plotting with others and inciting or inducing someone to commit such offences, it is sufficient to prove that the person carrying out these acts is doing so with the intention of committing a criminal act of a terrorist nature. This type of conduct is punishable not only for the act itself, but also for preparatory acts and attempts, as required by article 5 of the Law against Acts of Terrorism and articles 12 and 13 of the Penal Code.

On the other hand, where a person has been recruited through deception to commit criminal acts of a terrorist nature, only the court dealing with such a case may decide, on the basis of the evidence submitted in the proceedings, whether the error is a ground for exemption from criminal responsibility, as defined in articles 23 and 24 of the Penal Code.

Article 111 of the Penal Code refers to the recruitment of persons in Cuba, without the permission of the Government, for military service on behalf of a foreign State. Article 112 refers to the commission on Cuban territory of an act designed to threaten the independence of a foreign State, the integrity of its territory or the stability or reputation of its government.

1.11 In the context of the effective implementation of subparagraph 2 (e) of the resolution, the CTC would appreciate knowing which special investigative techniques may be used in the Republic of Cuba in relation to terrorism (e.g. interception of communications; electronic surveillance; observation; undercover operations; controlled delivery; "pseudo-purchases" or other "pseudo-offences"; anonymous informants; cross-border pursuits, bugging in private or public premises, etc.). Please explain what these techniques consist of, as well as the legal conditions that govern their use. The CTC is also interested in learning details such as: whether the use of these techniques is restricted to actual suspects; whether they may only be utilized with the prior approval of a court; whether there is a limit to the time-period in which they may be used. Could Cuba further indicate whether, and if so how these techniques could be used in cooperation with another State?

In Cuba the use of special investigative techniques is currently under consideration and their inclusion is being assessed in the framework of continual improvements to our antiterrorist legislation.

1.12 With a view to bringing terrorists and their supporters to justice, the CTC would be grateful to know whether Cuba has taken measures to protect vulnerable targets involved in the prosecution of terrorist crime (e.g. protection of victims, of persons collaborating in the pursuit of justice, of witnesses, of judges and prosecutors). Please describe the legal and administrative provisions put in place to ensure the protection of such persons. Could the Republic of Cuba also indicate whether, and if so how these measures could be utilized in cooperation with, or at the request of another State?

In Cuba it has not been necessary to implement special programmes to protect victims, witnesses or other persons involved in the prosecution of terrorist crimes. There have been no cases to date of persons in the above-mentioned categories who have been assaulted or harmed due to their participation in this type of criminal proceedings.

However, article 142 of the Cuban Penal Code establishes as an offence "*the use of violence or intimidation against any person who might have contributed, as a witness or in any other way, to the implementation or application of laws or general provisions*". The same article also establishes sanctions in cases where violence or intimidation are exercised against a person's relatives for the purposes of revenge or reprisals.

1.13 In regard to the effective implementation of article 5 of the International Convention for the Suppression of the Financing of Terrorism, please indicate whether the Republic of Cuba has undertaken measures to establish the civil, criminal or administrative liability of legal persons for criminal offences, in particular offences related to terrorist activities. Is it possible to assign liability to a legal person, in a case where no natural person has been identified or convicted?

Article 16.3 of the Cuban Penal Code establishes that "*legal persons shall be criminally liable for those offences set forth in this code or in special laws which are committed within the sphere of action of the said legal persons when such offences are perpetrated by representatives or associates by agreement, without prejudice to the individual criminal liability incurred by the perpetrators or accomplices.*"

Furthermore, article 16.4 of the Code establishes as follows: "*legal persons shall be subject to criminal liability in relation to cooperatives, legally constituted companies and associations, foundations, non-State companies that are authorized to carry out their activities, and other non-State entities that are conferred the status of legal person by law.*"

In this regard, it should be noted that articles 106 to 109 of the Penal Code define the offence of terrorism. Furthermore, Law No. 93 (Law against Acts of Terrorism) is a special criminal law and, under article 2 thereof, the regulations of the General Part of the Penal Code are applicable to it. It is therefore possible for a legal person to be subject to criminal liability in cases where it has participated in criminal acts relating to terrorist activities.

On the other hand, in relation to the civil liability of legal persons, article 95 of the Cuban Civil Code establishes as follows:

> "*ARTICLE 95.1. Legal persons shall be obliged to compensate for damages caused to other persons by illicit acts committed by their directors, officials and other workers in the exercise of their functions, without prejudice to their right to recover from the guilty party.*
>
> *2. If the illicit act constitutes an offence and is committed by the directors, officials or other workers in the improper exercise of their duties, the legal person shall be liable subsidiarily.*
>
> *3. The legal person shall also be liable for damages caused by its directors, officials or other workers who have acted in the exercise of their duties or with due obedience and who, owing to that circumstance, have been declared exempt from criminal liability.*"

In addition, the following legal obligations relating to the liability of both natural and legal persons should be cited:

(*Penal Code*) Article 70.1. "*A person who is criminally liable shall also be civilly liable for damages caused by an offence. The court that is trying the offence shall rule on civil liability and its extent, applying the corresponding rules of civil law (...).*"

Law against Acts of Terrorism. Article 9. "*For the offences set forth in this law, the court may confiscate the convicted person's goods as a supplementary penalty, under the provisions of article 44 of the Penal Code.*"

(*Penal Code*) Article 44.1. "*The penalty of confiscation of goods shall consist in dispossessing the convicted person of goods, either totally or partially, and transferring them to the State.*"

2. "*The confiscation of goods shall not include, however, goods or objects that are essential for satisfying the vital needs of the convicted person or of dependent relatives.*"

3. "*The penalty of confiscation of goods shall be applied at the court's discretion for offences against State security, against patrimonial rights and against the national economy. On a compulsory or discretionary basis, the penalty shall also be applicable to other offences provided for in the Special Part of this Code, as may be established.*"

Law on Penal Procedures. Article 275. "*Action to claim civil liability arising from the offence shall be jointly brought with criminal liability claims, except in those cases where there is an injured person whose testimony depends on his/her health. In that case, an indictment shall be made and the court shall continue with trial proceedings until it reaches a verdict in which, without pronouncing on civil liability, it shall instruct the injured party on bringing corresponding action before the competent civil court at the appropriate procedural time.*"

Law on Penal Procedures. Article 276. "*Without prejudice to the provisions of the previous article, abatement of criminal action shall not include abatement of civil action, and the person concerned may bring action in the appropriate way and form, except where the enforceable sentence declared that civil action could not be initiated.*"

Law on Penal Procedures. Article 277. "*The examining magistrate, the court or the public prosecutor may at any stage of the proceedings, ex officio or upon application by the party concerned, have at its disposal by legal ruling the precautionary measures of bail, seizure and confiscation of goods of the accused party or of a liable third party, as might be necessary to ensure the future enforcement of a sentence in relation to civil liability.*"

Effectiveness of customs, immigration and border controls

1.14 Subparagraph 2 (c) of the resolution requires States to deny safe haven to terrorists and their supporters. In this regard, could the Republic of Cuba please provide the CTC with an outline of the legislative provisions regarding the granting of citizenship or other civic rights? Can a foreigner, who is granted citizenship, change his/her name? What precautions are taken to establish the true identity of a person before new identity papers are issued to that person?

Legislative provisions relating to the granting of citizenship or other civic rights

In Cuba legislative provisions relating to the granting of citizenship or other civic rights are contained in the Republic's Constitution; Law No. 59/1987, Civil Code; Law No. 51/85 on the Registration of Civil Status; Resolution No. 157/85, which provides its regulations; Decree No. 358 of 4 February 1944 on Citizenship Regulations and its supplementary provisions.

Under article 41 of the Constitution, all Cuban citizens enjoy equal rights and are subject to the same duties. A foreign citizen who acquires Cuban citizenship, in accordance with the requirements established by law, will therefore enjoy the same rights as native-born Cuban citizens.

Cuban citizenship is acquired by birth or by naturalization. Under article 29 of the Constitution, the following persons are considered native-born Cuban citizens:

(a) "*Those born in national territory, with the exception of the children of foreigners who are working in the service of their government or international organizations. The law establishes requirements and formalities for the cases of children of temporary foreign residents in the country;*

(b) *Those born overseas to a Cuban father or mother who is carrying out an official mission;*

(c) *Those born overseas to a Cuban father or mother, with the requirements stipulated by law having been previously fulfilled;*

(d) *Those born outside national territory to a father or mother born in the Republic of Cuba who has lost his/her Cuban citizenship, providing that the claim is made in the way stipulated by law;*

(e) *Foreigners who, owing to exceptional merit achieved in the struggles for the liberation of Cuba, are considered native-born Cuban citizens.*"

On the other hand, article 30 of the Constitution establishes that the following persons are considered naturalized citizens:

(a) *Foreigners who acquire citizenship in accordance with the law's provisions;*

(b) *Those foreigners who served in the armed struggle against the tyranny overthrown on 1 January 1959, provided that they prove this condition in the legally established way;*

(c) *Those foreigners who, having been arbitrarily deprived of their citizenship of origin, obtain Cuban citizenship with the express agreement of the Council of State.*

Law No. 51 of 1985 on the Registration of Civil Status and Resolution No. 157 of the same year, which provides its regulations, include provisions that complement those on citizenship contained in the Constitution.

According to articles 59 and 138 of the above-mentioned regulations, in order to acquire Cuban citizenship a person must submit to the civil status registrar a written request that includes names and surnames, nature of the request, permanent identity number, citizenship, place of birth, age, occupation, area of residence, any other circumstance relating to civil status required for the application, the basis of the application and the date and place of arrival in Cuba. The request should also include the name, surnames and citizenship of the spouse, if applicable, the name and surnames of any Cuban children, and an express statement that he/she renounces his/her current citizenship, intends to acquire Cuban citizenship and will comply with the Republic of Cuba's Constitution and its laws.

Furthermore, a condition of applying for Cuban citizenship is that the interested foreign person should have had an immigration status of permanent resident in the country for a period of more than five years, including at least one year after having stated his/her intention to acquire Cuban citizenship. In the case of marriages of foreigners to Cuban citizens, and where children have been born of the union, the period of permanent residency can be reduced to two years, at the discretion of the competent authority.

Can a foreigner, who is granted citizenship, change his/her name? What precautions are taken to establish the true identity of a person before new identity papers are issued to that person?

Firstly, a foreigner who is acquiring Cuban citizenship is identified by his own name and, consequently, cannot change his/her name or other personal details that identify him/her.

It is necessary to take into account that, in accordance with article 12.1 of Civil Code Law No. 59 of 16 July 1987, "*the civil capacity of persons to exercise their rights and to bring legal action shall be governed by the legislation of the State of which they are citizens*". If a foreigner has acquired Cuban citizenship, he/she may therefore instigate action to change his/her name or surnames before the corresponding civil status registrar, as Cuban law is applicable to him/her under the provisions of Law No. 51/85 on the Registration of Civil Status and Resolution No. 157/58, which provides its regulations.

The regulations establish that, exceptionally, names or surnames may be changed, added to, modified or suppressed once, or up to two times, if the interested person has reached the age of majority. The application will be submitted to the registry office where the interested person resides.

In order to consider authorizing a change, addition, modification or elimination of a name or surname, proof will be required that the name change is justified on the grounds that the name contains words which are not part of common usage, or on the grounds that it is associated with events, objects, animals or items. The individual in question will also be required to demonstrate that he or she is known socially by the desired name or surname.

Changes, additions, modifications or elimination of names or surnames will not be authorized if the desired names or surnames have any of the characteristics described above.

The registrar shall notify the Central Criminal Register in the Ministry of Justice any change, addition, modification or elimination of the name or surname of an individual with a criminal history, so that the appropriate checks can be made.

The application from the individual concerned must be accompanied by a birth certificate, criminal record details, evidence of marriage (if applicable), birth certificates of children (if applicable) and a statement sworn before a notary.

The statement must be sworn before a notary in the presence of two witnesses. It must contain the details required and indicate how the person is known socially, since that is the central matter to which the witnesses must attest, with the notary confirming that they have done so.

The applicant will also be fingerprinted and the fingerprints transmitted officially, with a copy of the decision issued, to the National Identity Directorate of the Ministry of the Interior.

Visas for permanent residence in Cuba are confined mainly to foreign family members (father, mother, spouse and children) of Cuban nationals. Applications may be made by the foreign national in question to the Cuban consulate in the country in which he or she resides, or by the Cuban family member to the immigration authorities in Cuba.

The process for issuing a permanent resident visa may take from six months to one year, depending on the documentation required and the checks which must be made. No foreign national may enter the country without documentation, with forged documentation or with documentation which the immigration authorities consider doubtful.

Any foreign national authorized to stay in Cuba for more than 90 days must have documents issued by the national immigration authorities in addition to his identity documents. In that connection, entry into Cuba will be denied to any foreign national with a record of connections with drug, arms or human trafficking or with terrorism.

The Cuban authorities verify an individual's identity on the basis of his or her personal identity documents, establishing their accuracy by checking fingerprints and other necessary information, including information obtained from Cuban consulates abroad.

1.15 Effective implementation of subparagraphs 2 (c) and (g) of the resolution requires the enforcement of effective customs, immigration and border controls in order to prevent the movement of terrorists and the establishment of safe havens. In this regard, would the Republic of Cuba please outline how it implements the common standards set by the World Customs Organization in relation to electronic reporting and the promotion of supply chain security?

Cuba is a member of the World Customs Organization. The Cuban Customs Service, as the entity responsible for border controls, coordinates with the immigration authorities and other operational bodies of the Ministry of the Interior, maintaining permanent working contacts to prevent individuals with a history of connection with terrorist activities from entering the country and to prevent attempts to bring arms and explosives into the country.

Although there has been no success in securing compulsory advance information on passengers and cargo from the countries from which flights depart, mechanisms have been set up to check all passengers in coordination with the other authorities appointed to carry out those checks. Similarly, checks are carried out on cargo and goods arriving by air, sea or mail.

In this connection, the Cuban authorities are currently examining the possibility of adopting legislation to make it compulsory for airlines to provide advance information on passengers and cargo, so helping to implement the recommendations of the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA).

1.16 With regard to steps taken by the Republic of Cuba in order to strengthen the security of its ports, airports, tourist marinas and coast, referred to in the first report (at pages 13 and 14), please indicate whether the competent Cuban authorities have established procedures periodically to review and update transport security plans.

The Cuban Customs Service, as part of the ministerial border-protection system, has drawn up plans to strengthen security measures and has made permanent the practice of conducting inspection visits to customs units to check compliance with those measures.

Among the aims of the measures are preventing arms and explosives from entering the country and taking the necessary action to protect transportation in general, including ports, airports, tourist marinas and the coast.

In this connection, please also refer to the information in Cuba's first report (S/2002/15, page 43) regarding non-legislative measures adopted in the wake of 11 September 2001.

1.17 The CTC notes from the first report (at page 10) that the Republic of Cuba has implemented the standards and recommendations of the International Civil Aviation Organization (annex 17). Could the Republic of Cuba inform the CTC when the ICAO safety audit of the Republic of Cuba's international airports has been completed?

The ICAO security audit (AVSEC) was conducted in Cuba from 8 to 17 March 2004.

We would point out that the head of the ICAO audit team, in the oral summary he made on 17 March 2004, indicated that Cuba's civil aviation complied with the standards of annex 17 to the Chicago Convention.

Effectiveness of controls preventing access to weapons by terrorists

1.18 Subparagraph 2 (a) of the resolution requires each Member State, inter alia, to have in place appropriate mechanisms to deny access to weapons to terrorists. With regard to this requirement of the resolution, as well as to the provisions of the Convention on the Marking of Plastic Explosives for the Purpose of Detection and the International Convention for the Suppression of Terrorist Bombings, please provide the CTC with information relevant to the following questions:

A) Export control

- **Please describe the system of export and import licensing or authorization, as well as measures on international transit, used by the Republic of Cuba for the transfer of:**
  - **Small arms and light weapons;**
  - **Other firearms, their parts and components and ammunition;**
  - **Explosives and their precursors.**
- **Please specify the export control procedures and existing mechanism for the exchange of information regarding the sources, routes and methods used by traders in firearms.**
- **Do Cuban procedures allow for the lodging and registering or checking of the goods declaration and supporting documents relating to firearms prior to the import, export or transit of the goods? Does Cuba encourage importers, exporters or third parties to provide information to Customs prior to their shipment? Please also outline any appropriate mechanism to verify the authenticity of licensing or authorization documents for the import, export or transit movements of firearms.**
- **Has the Cuban Customs Service implemented intelligence-based risk management of borders to identify high-risk goods? Please outline what data and considerations are used by the Customs Administration to identify high-risk consignments prior to shipment.**

B) Stockpile management and security

- **Please outline the legal provisions and administrative procedures in the Republic- of Cuba that provide for the security of firearms, their parts and components, ammunition and explosives and their precursors at the**

time of their manufacture, import, export and transit through Cuban territory.

- **What national standards and procedures exist for the management and security of firearms and explosives stocks held by the Government of the Republic of Cuba (in particular, held by armed forces, police, etc.) and other authorized bodies?**

- **Has the Republic of Cuba implemented, using risk assessment principles, any special security measures on the import, export and transit of firearms, such as conducting security checks on the temporary storage, warehousing and means of transport of firearms? Are persons involved in these operations required to undergo security vetting? If yes, please give details.**

C) Law enforcement/illegal trafficking

- **What special measures are used by the Republic of Cuba to prevent and suppress illegal trafficking in firearms, ammunition and explosives utilized by terrorists?**

- **Do Cuban law enforcement authorities cooperate with the Interpol system of tracking firearms and explosives?**

Cuba centralizes the import of firearms through its Ministry of Armed Forces and Ministry of the Interior. This prevents individuals connected with criminal activity, including terrorism-related criminal activity, from acquiring such weapons.

Matters connected with authorizing natural or legal persons to import or export firearms, their parts and components, ammunition, explosives or their precursors, are in the hands of the Ministry of the Interior. Imports and exports are subject to production of the appropriate licence and the end-use certificate.

The action which the national customs service takes to prevent and halt trafficking in firearms, explosives and ammunition is encompassed in Decree-Law No. 52 of 1982. Its provisions include compulsory advance notification when natural or legal persons wish to import a firearm into the country. It regulates checks on the legality of permits and types of arms, including their calibre and serial number.

Cuban legislation in this field bans the export from or transit through the country of firearms bound for other countries. The only exception made to this provision is for arms which are for use in sports competitions abroad.

Cuba has legislation and regulations establishing security measures to prevent terrorists from gaining access to firearms, their parts and components, ammunition, explosives or their precursors which are held by the Revolutionary Armed Forces, the Ministry of the Interior, security and protection services authorized by the State to guard civilian targets, and other legal holders.

For further details, please refer to the reply to question 1.9 above regarding border and immigration control, control preventing trafficking in drugs, arms, biological and chemical weapons, their precursors and the illicit use of radioactive materials. We would also recommend consulting the reply to paragraph 2 (a) on pages 7 and 8 of Cuba's supplementary report (S/2002/1093), made in September 2002, and the reply to question 1.8 above on the new Decree-Law on arms and ammunition, which will deal in greater depth with international trade matters and

which is currently in the final stages of review prior to being sent to the appropriate authorities for approval.

The Interpol Havana office has so far received no request for cooperation from Interpol regarding the tracking of firearms or explosives.